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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,215	12/22/2003	Michael Brinkman	502119	7636

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EXAMINER

MARSH, STEVEN M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,215

Applicant(s)

BRINKMAN ET AL.

Examiner

Steven M Marsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the second action for U.S. Application 10/743,215 for a Label Holder for a Shelf Price Channel filed by Michael Brinkman on December 22, 2003.

Claim Rejections - 35 USC § 103

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,688,567 B2 to Fast et al. in view of U.S. Patent 6,708,436 B2 to Nagel. Fast et al. discloses a partially translucent, PVC label holder (see fig. 10) with a back panel (18) connected to a front portion (50 and 52) for holding a sign therebetween. There is a top flange (54) proximate a top portion of the back panel and a shelf clip portion (16) in contact with the top flange, but spaced rearward from the back panel at the bottom. There is an upward retaining flange (32) and a downward angled portion terminating in a catch flange (122) and a curved resilient hinge portion (120) extended from the downward angled portion and wrapping around the catch flange to form an upward flange. The retaining flange can pivot in response to an upward pivoting movement of the back panel and the catch flange is configured to engage a lower shelf channel flange. The downward angled engaging portion is not disclosed as 20 degrees from vertical, but the specific angle is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention.

Fast et al. does not disclose a label holder with a front panel connected to the back panel along a bottom portion to form a cavity therebetween. Nagel discloses a label holder with a sign holding portion (formed by 11 and 12) and a clip portion (15).

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The sign holding portion has a translucent front panel (11) and a back panel (12) connected to the front panel along a bottom portion thereof, forming a cavity therebetween. There is a top flange (19, 20, 22, and 23) extending forward from the back panel and having a downward depending edge. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have replaced the sign holding portion taught by Fast et al. (18, 50, and 52), with the sign holding portion taught by Nagel (11 and 12), for the purpose of providing a more secure holding arrangement for a sign. Nagel does not disclose whether the back panel (12) is transparent or opaque, but Fast et al. teaches the use of an opaque panel and transparent front panel to allow a passerby to view a label in a pocket. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized that teaching and formed the back member of an opaque PVC material.

Fast et al. in view of Nagel does not specifically disclose the label holder mounted on a C-channel shelf. However, Fast et al. discloses that the label holder can be used with a C-channel shelf (col. 9, lines 5-12). Fast et al. in view of Nagel also fails to disclose the specific height of the label holder. However, the height of the label holder is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention.

Response to Arguments

Applicant's arguments filed February 4, 2005 have been fully considered but they are not persuasive. Applicant argues that there would be no reason to modify Fast et

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al. with the holding portion of Nagel et al. because Fast et al. already discloses back and front panel members which form a pocket for receipt of a label that is captured in the pocket. However, in addition to the pocket formed by 16 and 18, elements 50 and 52 of Fast et al. form a sign holding portion, and it would have been obvious to one of ordinary skill in the art at the time of the present invention to have modified that holding arrangement, by providing a holding arrangement such as the pocket taught by Nagel to provide a more secure holding arrangement. Fast et al. discloses a holder for both a label and a sign. The Examiner disagrees that the references fail to disclose a curved resilient hinged portion as discussed above in the rejection under section 103.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

slm

Steven M. Marsh

April 26, 2005


RAMON O. RAMIREZ
PRIMARY EXAMINER